ESTTA Tracking number:

ESTTA239073 09/25/2008

Filing date:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048260
Party	Plaintiff i play. inc.
Correspondence Address	Steven C. Schnedler Carter & Schnedler, P.A. P.O. Box 2985 Asheville, NC 28802 UNITED STATES schnedler@ashevillepatent.com
Submission	Testimony For Plaintiff
Filer's Name	Steven C. Schnedler
Filer's e-mail	schnedler@ashevillepatent.com
Signature	/Steven C. Schnedler/
Date	09/25/2008
Attachments	Exhibits 21-25.pdf (36 pages)(2096859 bytes)

Cancellation No. 92048260

i play. inc. (change of name from FAMILY CLUBHOUSE, INCORPORATED d/b/a i play), a North Carolina corporation,

Cancellation Petitioner,

v.

INTERNATIONAL PLAYTHINGS, INC, a Delaware corporation,

Registrant.

Exhibit offered by i play. inc.

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Dear Ms. Cannon,

I recently visited Kiawah Island, SC and went into a gift shop. I saw "i play." products and I thought they were made by the manufacturer I know from Asheville. I later learned that someone else is using the i play. name (International Playthings). This was very confusing to me and perhaps even misleading since I trust the i play company that I am familiar with and do not know anything about the other one. I did not think the quality looked as good on their products, but I was tempted to buy one because I know that the Asheville i play produces a very well-made item.

Best regards,

Sally Broach

President Just Ducky Originals 1575 Jenkins Valley Road Alexander, NC 28701

Cancellation No. 92048260

i play. inc. (change of name from FAMILY CLUBHOUSE, INCORPORATED d/b/a i play), a North Carolina corporation, Cancellation Petitioner,

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Exhibit offered by i play. inc.

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----Original Message----

From: David Murrell [mailto:kosmo@mac.com] Sent: Wednesday, January 07, 2004 4:05 PM

To: i play Cannon Becky

Subject: Confusion regarding International Playthings and I Play

Dear Ms. Cannon,

While attending a trade show recently, I happened to see a booth advertising "I Play." I entered the booth expecting to see the products I know and love and was surprised to learn that a company by the name of International Playthings was using the name I Play. Their logo was VERY similar so I thought that International Playthings was simply distributing I Play products. When I enquired about this I was told that the brand I Play belonged to International Playthings and there was no connection between the two companies. I found this to be very confusing. I was attending the trade show with a Japanese client who has been buying I Play for a number of years and he was as baffled as I was. In short, I find this situation to be very confusing not only consumers but to industry professionals as well.

Please let me know If I can be of further service.

Best regards,

KOSMO Corporation David G. Murrell, IV, President 240 Edison Street Salt Lake City, UT 84111

Tel: 801-364-1600 Fax: 801-364-1601

eMail: David@KosmoCorp.com

Data

\triangleright	Original Message
	> From: Amy Jamison [mailto:amyljamison@yahoo.com]
	> Sent: Tuesday, January 13, 2004 10:31 AM
	> To: becky@iplaybabywear.com
	> Subject: Confusion over the name "I Play" being shared by two companies
	>
	> Dear Ms. Cannon,
	>
	> I wanted to take this opportunity to express my confusion over the name "I Play" being used by two companies.
	I recently purchased a toy with the brand name "I
	> Play" on the box. It was missing two pieces. When I
	> went to the retailer, they gave me the number of your
	> company, thinking that it was the same "i play"
	> company that made the toy that I bought. When I
	> called you I found out that you weren't at all the
	> makers of the toy that I bought and that, in fact,
	> these are two separate companies.
	>
	> I hope you are able to resolve this issue of names
	> soon. As a consumer, (and apparently to retailers
	> too) it is very confusing when there are two companies
	> sharing the same name.
	>
	> Best wishes,
	> Amy Jamison

X direy F. January

Date: 1/28/04

Cancellation No. 92048260

i play. inc. (change of name from FAMILY CLUBHOUSE, INCORPORATED d/b/a i play), a North Carolina corporation,

Cancellation Petitioner,

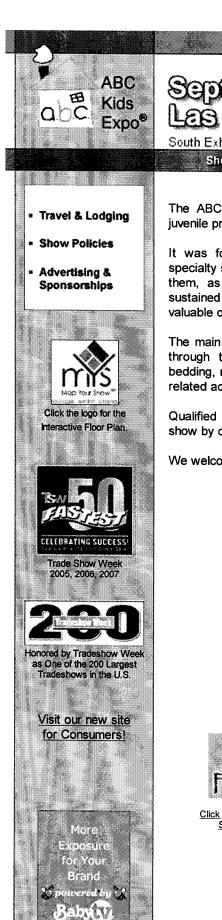
v.

INTERNATIONAL PLAYTHINGS, INC, a Delaware corporation,

Registrant.

Exhibit offered by i play. inc.

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September 7-11, 2008
Las Vegas Convention Center
South Exhibit Halls
Show Info * | Register Now | Buyer Info * | Exhibitor Info * | Media Info *

The ABC Kids Expo is the primary trade show for the juvenile products industry.

It was founded as a partnership between independent specialty store retailers and the manufacturers who support them, as a method in which to promote the long-term sustained growth of the industry as well as to provide valuable opportunities for networking and education.

The main focus of the show is on products from newborn through teen, predominantly in the areas of furniture, bedding, room décor, baby gear, gift and layette, toys and related accessories.

Qualified show attendees may now register for the fall show by clicking on the "Register Now" link shown above.

We welcome you to Las Vegas this September.

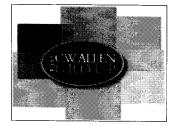
ABC Hotline: (210) 691-4848 Fax: (210) 691-4849

E-Mail: info@theabcshow.com

<u>Click here</u> to see more images from the 2007 ABC Kids Expo

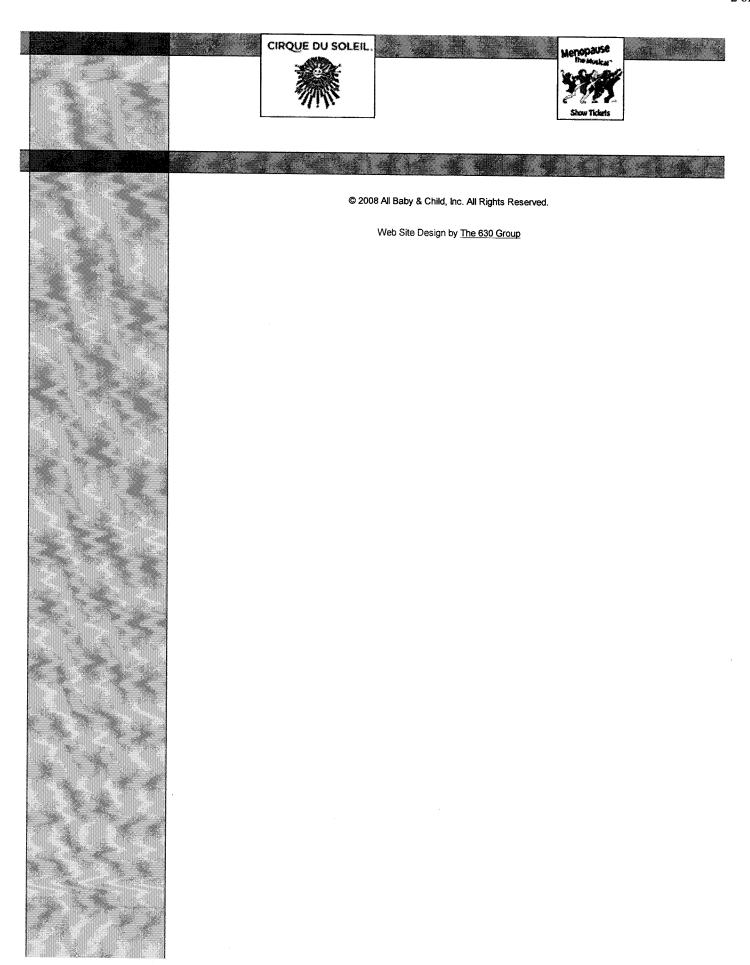


Click here to learn about the First Candle/ABC Silent Auction and how you can help.



Click here to Replay: The New Art of Effective Boothmanship

Discounted Show Tickets for ABC Kids Expo Attendees



Exhibitor Search | Product Category Search | MyShow

Exhibitor Search

Matching Exhibitors:	
Exhibitor Name	Booth(s) My Show
I Lite 4 U, LLC	<u>342</u>
<u>i play.</u>	4801
I.D. GEAR INC.	2105
Ica Home Decor	<u>1113</u>
iCandy	6835
<u>IDEAON LLC</u>	<u>1121</u>
idFixed B. V.	<u>1044</u> —
IDM Group, LLC	<u>2214</u>
Iglooplay by Lisa Albin Design	7019
Imex Packaging	<u>5503</u>
Imp Prints Co. Ltd	<u>6113</u>
InchBug LLC - Makers of BumpyName Orbit Label	330 [
Infamous Baby	3922
Infantino, LLC	8615 C
<u>Infantissima</u>	<u>5109</u>
Infantrust Parenting Solutions	821
Inglesina USA, Inc.	<u>7445</u>
Innobaby LLC	7725 T
Inspired Crib Bedding	<u>1927</u>
Inspired Ideas	<u>2829</u>
Instant Murals Design, Inc.	1127
InSTEP/Schwinn	<u>8225</u>
International Playthings, Inc.	<u>1630</u>
<u>IsaBooties</u>	1844 T
<u>lsoki</u>	<u>2121</u>
Itty Bitty Me, Inc.	<u>1931</u>
Itzy Bitzy Shoes	<u>4907</u>
<u>Itzy Ritzy</u>	7439

Exhibitor Name Booth(s) My Show

Exhibitor Search | Product Category Search | MyShow

Return to search results

i play. (Add to MyShow)

Booth(s): 4801

Request more information www.iplaybabywear.com

Contact Information:

2000 Riverside Drive Suite 9 Asheville, NC 28804 828-254-9236 (p)

Company Description:

Swim wear, bibs, winter wear, rain wear, organic layette, gifts & accessories

Product Categories:

- Apparel
- Bibs / Burp Cloths
- Blankets
- Diaper Bags / Travel Products
- Feeding Products
- Footwear
- Gift Sets
- Headwear
- Layette
- Organic Products
- Plush
- Sun Protection

Exhibitor Search | Product Category Search | MyShow

Return to search results

International Playthings, Inc. (Add to MyShow)

Booth(s): 1630

Request more information

www.intplay.com

Contact Information:

75 D Lackawanna Avenue Parsippany, NJ 07054 800-631-1272 (p)

Company Description:

Infant and preschool toys and games. Imaginetics, National Geographic, Tomy/Takara, Earlyears, Taggies, Viking, OkieDog, Yookidoo, Kitchen Littles, Calico Critters, Mighty World, Gotz, Quercetti, Viking, iPlay, Fitness Fun, Wham-O

Product Categories:

- Educational Products
- Toys

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Paul H. Kochanski LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK, LLP 600 South Avenue West Westfield, NJ 07090-1497 Tel: 908 654 5000

Fax: 908 654 7866

Attorneys for Plaintiff International Playthings, Inc.

Document Filed Electronically

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

INTERNATIONAL PLAYTHINGS, INC.,

Civil Action No.

Plaintiff,

v.

FAMILY CLUBHOUSE, INCORPORATED d/b/a i play

Defendant.

v

COMPLAINT AND DEMAND FOR TRIAL BY JURY

Plaintiff International Playthings, Inc., by way of complaint against the defendant Family Clubhouse, Incorporated, hereby alleges and avers as follows:

JURISDICTION AND VENUE

- 1. This is an action in which the plaintiff is seeking pecuniary and injunctive relief from acts of the defendant arising under the Trademark and Unfair Competition Laws of the United States, 15 U.S.C. §§ 1051 et seq., and for a related claim of unfair competition under the common law of the State of New Jersey arising out of the same nexus of operative facts.
- 2. Jurisdiction is proper in the United States District Court pursuant to 15 U.S.C. §§ 1331, 1338(a) and (b), and § 1121.

3. Venue is proper in the District of New Jersey pursuant to 28 U.S.C. §§ 1391(b) and (c).

PARTIES

- 4. Plaintiff International Playthings, Inc., is a corporation organized and existing under the laws of the State of New Jersey and having its principal place of business at 75D Lackawanna Avenue, Parsippany, New Jersey 07054.
- 5. Defendant Family Clubhouse, Incorporated doing business as i play, upon information and belief, is a corporation organized and existing under the laws of the State of North Carolina and having its principal place of business at 2000 Riverside Drive, Unit 9, Asheville, North Carolina 28804.

BACKGROUND

- 6. Plaintiff trades its products in North America and has established an excellent reputation for quality and service and is recognized throughout North America as a leader in providing children's toys.
- 7. As part of its marketing plan, plaintiff has adopted a number of different trademarks to be used in conjunction with the sale of plaintiff's product in the educational toy area.
- 8. One such mark that plaintiff has adopted is the I PLAY AND DESIGN trademark as shown below:



- 9. Plaintiff adopted the I PLAY AND DESIGN trademark in late 2001 in conjunction with a collection of two products for use by children from the toddler stage up through the age of five. These were the next level of toy products after the EARLYYEARS product line.
- 10. Plaintiff first began using the I PLAY AND DESIGN trademark on its toy products on February 2, 2002.
- 11. Plaintiff's I PLAY AND DESIGN trademark is prominently featured on plaintiff's marketing literature, advertising, Web site and on the toy products themselves.
- 12. In an effort to protect its I PLAY AND DESIGN trademark on its toy products, on December 5, 2001, plaintiff applied for and subsequently obtained, a federal registration for the I PLAY AND DESIGN trademark as applied to the following products: educational toys, namely, stacking toys, rattles, blocks, rings and hammer and peg toys; bath toys; pretend play toys, namely, purse and make up sets, fishing reels and rod and fake fish sets, kitchen sets, and doctor kits; sand box toys; water and outdoor toys, namely, buckets, shovels, sand molds, sieves, sand mills and squirt toys; sport toys, namely, hula hoops, jump ropes, baseball bat and ball sets and soccer balls; games, namely, board games, card games and plastic action games; puzzles, namely, jigsaw puzzles, manipulative and cube type puzzles. This Trademark Registration No. 2,923,675 was obtained by plaintiff on February 1, 2005. A copy of the registration is attached hereto as Exhibit A.
- 13. Since as early as 2002 and continuing to the present, plaintiff has enjoyed considerable sales of its toy products which bear the I PLAY AND DESIGN trademark.
- 14. Since as early as 2002 and continuing to the present, plaintiff has advertised and promoted its toy products under its I PLAY AND DESIGN trademark.

- 15. Since the time that plaintiff began using the I PLAY AND DESIGN trademark, plaintiff has expended substantial time, effort, and funds to promote the sale of products including its children's toys in connection with the I PLAY AND DESIGN trademark throughout the United States. By virtue of its efforts, the public has come to identify the products marketed under the I PLAY AND DESIGN trademark as being of consistently high quality, and has come to associate such trademark with goods exclusively from plaintiff.
- 16. As a result of plaintiff's consistent sales and advertising of its children's toys under the I PLAY AND DESIGN trademark, such mark has acquired substantial and valuable goodwill in the marketplace, and has become plaintiff's most valued and valuable assets.

FIRST CLAIM FOR RELIEF

(Trademark Infringement)

17. Upon information and belief, long subsequent to plaintiff's adoption and use of the I PLAY AND DESIGN trademark, the defendant adopted and is anticipating to sell children's toy products, including children's toy tea sets and dinnerware under the I PLAY trademark and the following design trademark.



18. The products for which the defendant will use the I PLAY trademark are substantially identical to the products on which plaintiff has long previously used its I PLAY AND DESIGN trademark.

- 19. Defendant's toys sold under the I PLAY trademark will be advertised in and through the same sources, and will be sold through the same channels of trade to the same classes of customers as are the customers of plaintiff's products.
- 20. Upon information and belief, the I PLAY trademark for use in connection with the sale of toys was adopted by the defendant with actual and prior knowledge of plaintiff's long prior use of the I PLAY AND DESIGN trademark and of the substantial goodwill and high-quality reputation established in connection with such mark.
- 21. The I PLAY trademark by the defendant on toys is identical to the trademark plaintiff utilizes on toys, and therefore defendant has appropriated for itself plaintiff's I PLAY AND DESIGN trademark.
- 22. As a result, the use by the defendant of the I PLAY trademark is likely to cause confusion within the trade and the purchasing public, and to create the false impression that defendant's goods sold under the I PLAY trademark are the products of plaintiff or are sponsored by, approved by, authorized by, or associated with plaintiff, or that there is some relationship between plaintiff and defendant.
- 23. Such conduct by the defendant has caused and will continue to cause substantial damage to plaintiff unless enjoined by this Court.
- 24. Defendant's conduct as set forth herein, constitutes willful and malicious infringement of plaintiff's I PLAY AND DESIGN trademark under 15 U.S.C. § 1114, thus rendering the present case as an "exceptional" case as that term is employed in 15 U.S.C. § 1117.
 - 25. Plaintiff is without an adequate remedy at law.

SECOND CLAIM FOR RELIEF

Violation of § 43(A) of the Lanham Act

- 26. Plaintiff repeats and realleges each of the allegation contained in paragraphs 1-25 of the complaint insofar as applicable to this claim.
- 27. The defendant, by use of the I PLAY trademark, in an attempt to market toys, has affixed, applied, annexed, or used in connection with the sale of such goods, a false designation of origin and false descriptions and representations which tend to falsely describe or represent such goods and has caused such goods to enter into commerce with full knowledge of the falsity of such designation of origin and of such descriptions and representations, all to the detriment and damage of plaintiff.
- 28. In particular, the sale, offering for sale, and distribution in commerce by the defendant of toys utilizing the I PLAY trademark and the overwhelming similarity to the products of plaintiff sold under the I PLAY AND DESIGN trademark constitutes a false description and representation tending to falsely describe or represent the products being sold by defendant as products endorsed, sponsored, and/or authorized by plaintiff.
- 29. Defendant's adoption of the confusingly similar I PLAY trademark was with the express intent to cause confusion or mistake, to deceive and to mislead the trade and purchasing public and to trade upon the reputation and goodwill of plaintiff, and to improperly appropriate valuable property rights of plaintiff.
- 30. The conduct of the defendant aforesaid in violation of 15 U.S.C. § 1125(a) (Section 43(a) of the Lanham Act), has caused and will continue to cause irreparable injury to plaintiff unless enjoined by this Court.
 - 31. Plaintiff is without an adequate remedy at law.

THIRD CLAIM FOR RELIEF

Common-Law Unfair Competition

- 32. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1-31 of the complaint insofar as applicable to this claim.
- 33. The defendant, by its acts herein above alleged, have willfully, knowingly, and intentionally engaged in acts constituting unfair competition under the common law of the State of New Jersey against plaintiff, by, among other things, adopting the I PLAY trademark for toys in a manner which will undermine plaintiff's position in the marketplace.
- 34. Such conduct by the defendant has caused and will continue to cause irreparable injury to plaintiff unless enjoined by this Court.
 - 35. Plaintiff is without an adequate remedy at law.

WHEREFORE, plaintiff prays for the following relief:

- A. An order adjudging the defendant to have infringed plaintiff's federally registered I PLAY AND DESIGN trademark arising out of defendant's use of the I PLAY trademark on toys;
- B. An order preliminarily enjoining during the pendency of this action and finally permanently enjoining defendant, together with its officers, employees, servants, and agents, as well as all persons in active concert, privity, or participation with them from employing the IPLAY trademark or any other name or trademark which would be confusingly similar to plaintiff's federally registered I PLAY AND DESIGN trademark on or in connection with the manufacturing, packaging, marketing, displaying, offering to sell, or selling of toys;
- C. An accounting to determine defendant's profits in connection with its sales of products utilizing the I PLAY trademark and an award to plaintiff of such profits:

- D. An award of compensatory damages arising out of defendant's infringement and trebled as provided by 15 U.S.C. § 1117;
 - E. An order adjudging the defendant to have violated 15 U.S.C. § 1125(a);
- F. An order preliminarily enjoining during the pendency of this action and finally permanently enjoining defendant, together with its officers, employees, servants, and agents, as well as all persons in active concert, privity, or participation with them, from violating 15 U.S.C. § 1125(a) by misleading perspective purchasers into believing that defendant's products sold under the I PLAY trademark are the same, synonymous with, endorsed by, authorized by, or in any way related to plaintiff's products;
- G. An award of compensatory damages resulting from defendant's acts in violation of 15 U.S.C. § 1125(a) and an accounting for an award of all profits realized by the defendant based on the aforesaid act;
- H. An award of punitive damages arising out of defendant's acts of violation of 15 U.S.C. § 1125(a);
- I. An order for delivery of and destruction of all products, labels, signs, prints, packages, wrappers, receptacles, advertising, marketing literature, and any other document in defendant's possession bearing the I PLAY trademark or any mark confusingly similar to plaintiff's federally registered I PLAY AND DESIGN trademark pursuant to 15 U.S.C. § 1118 used in connection with toy products;
- J. An order adjudging the defendant to be unfairly competing under the common law of the State of New Jersey with plaintiff;

K. An order preliminary enjoining during the pendency of this action and finally permanently enjoining defendant, together with its officers, employees, servants, and agents, as well as all persons in active concert, privity, or participation with them, from unfairly competing

with plaintiff;

L. An award of compensatory damages resulting from defendant's acts of unfair

competition and an accounting for an award of all profits realized by the defendant based on the

aforesaid act;

M. An award of punitive damages arising out of defendant's acts of unfair

competition;

N. An award of attorney fees and costs; and

O. Such other relief as this Court may deem necessary and just.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, International Playthings, Inc. demands a jury trial of all issues in connection with the above-captioned matter.

Respectfully submitted,

LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK, LLP Attorneys for Plaintiff International Playthings, Inc.

Dated: April/6, 2008

Paul H. Kochanski

Tel: 908.654.5000

E-mail:pkochanski@ldlkm.com litigation@ldlkm.com

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CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

The undersigned hereby certifies, pursuant to Local Civil Rule 11.2, that with respect to the matter in controversy herein, plaintiff and plaintiff's attorney is aware of a cancellation proceeding pending in the United States Patent and Trademark Office before the Trademark Trial and Appeal Board, entitled Family Clubhouse, Incorporated, d/b/a i play v. International Playthings, Inc., Cancellation No. 92048260.

Dated: April /0, 2008

LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK, LLP Attorneys for Plaintiff International Playthings, Inc.

By:

Paul H. Kochansk

Tel: 908.654.5000

E-mail: pkochanski@ldlkm.com litigation@ldlkm.com Int. Cl.: 28

Prior U.S. Cls.: 22, 23, 38, and 50

United States Patent and Trademark Office

Reg. No. 2,923,675 Registered Feb. 1, 2005

TRADEMARK PRINCIPAL REGISTER



INTERNATIONAL PLAYTHINGS, INC. (NEW JERSEY CORPORATION)
75D LACKAWANNA PLAZA
PARSIPPANY, NJ 07054

FOR: EDUCATIONAL TOYS, NAMELY, STACK-ING TOYS, RATTLES, BLOCKS, RINGS AND HAMMER AND PEG TOYS; BATH TOYS; PRETEND PLAY TOYS, NAMELY, PURSE AND MAKE UP SETS, FISHING REELS AND ROD AND FAKE FISH SETS, KITCHEN SETS, AND DOCTOR KITS; SAND BOX TOYS; WATER AND OUTDOOR TOYS, NAMELY, BUCKETS, SHOVELS, SAND MOLDS, SIEVES, SAND MILLS AND SQUIRT TOYS; SPORT TOYS,

NAMELY, HULA HOOPS, JUMP ROPES, BASEBALL BAT AND BALL SETS AND SOCCER BALLS; GAMES, NAMELY, BOARD GAMES, CARD GAMES AND PLASTIC ACTION GAMES; PUZZLES, NAMELY, JIGSAW PUZZLES, MANIPULATIVE AND CUBE TYPE PUZZLES, IN CLASS 28 (U.S. CLS. 22, 23, 38 AND 50).

FIRST USE 2-2-2002; IN COMMERCE 2-2-2002.

SN 76-344,977, FILED 12-5-2001.

LOURDES AYALA, EXAMINING ATTORNEY

AO 440 (Rev. 5/85) Summons in a Civil Action

United States District Court

DISTRICT OF NEW JERSEY

International Playthings, Inc.,

Plaintiff,

SUMMONS IN A CIVIL ACTION

٧.

Family Clubhouse Incorporated d/b/a i play,

CASE NUMBER:

Defendant.

TO: Family Clubhouse, Incorporated d/b/a i play 2000 Riverside Drive, Unit 9 Asheville, NC 28804

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon PLAINTIFF'S ATTORNEY (Name and Address)

Paul H. Kochanski, Esq. Lerner, David, Littenberg, Krumholz & Mentlik, LLP 600 South Avenue West Westfield, NJ 07090

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK	DATE
OLEINI.	DAIE

AO 440 (Rev. 5/85) Summons in a Civil Action

	RETURN O	F SERVICE				
Service of the Summons and Complaint was made	de by me ¹	DATE				
NAME OF SERVER		TITLE				
Check one box below to indicate appropriate me	thod of service					
☐ Served personally upon the defend	lant. Place when					
discretion then residing therein.	the summons an	d complaint were left:	f abode with a person of suitable age and			
Other (specify):						
STAT	TEMENT O	F SERVICE FEE	S			
TRAVEL	VICES		TOTAL			
DE	CLARATIO	N OF SERVER				
I declare under penalty of perjury u contained in the Return of Service and Statemen	nder the laws o t of Service Fees	f the United States o s is true and correct.	f America that the foregoing information			
Date Date	Sign	ature of Server				
	Addr	ess of Server				

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

	ting the civil docket sheet. (SE	E INSTRUCTIONS	ON THE REVERSE OF THE FORM	1.)	
I. (a) PLAINTIFFS			DEFENDANTS		
INTERNATIONAL PLAY?	THINGS, INC.		FAMILY CLUBHOUSE, INCORPORATED d/b/a i play		
	of First Listed Plaintiff Mon	ris	County of Residence of First Liste		
(EXCEPT IN U.	S. PLAINTIFF CASES)		(IN U.S. PLAINTIFF) NOTE: IN LAND CONDEMNAT	CASES UNLY) FION CASES, USE THE LOCA	TION OF
			THE LAND INVOLVED		·
(c) Attorneys (Firm Nam	e, Address, and Telephone N	lumber)	Attorneys (if known)		
LERNER, DAVID, LITTEN 600 South Avenue West, Su	IBERG, KRUMHOLZ & ME	ENTLIK, LLP			
Westfield, NJ 07090	ite 300				
Tel: 908 654 5000 Fax: 90					
ii. Basis of Jurisu	ICTION (Place an "x" in one box only)) (For Di	EENSHIP OF PRINCIPAL PA versity Cases Only)		box for defendant)
☐ 1 U.S. Government Plaintiff	X 3 Federal Question		PTF DEF	Incorporated or Principal	PTF DEF
riamini	(U.S. Governm Not a Party)	lent	G1 G1	of Business In This Stat	
☐ 2 U.S. Government Defendant	☐ 4 Diversity (Indicate	Citizen State	of Another 2 2 2	Incorporated and Principal of Business In Another	
	Citizenship of		or Subject of a 3 3	Foreign Nation	□6 □6
IV. NATURE OF SUIT	Parties in Item (Place an "x" in one box only)		5. Country		
CONTRACT	TORT		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
© 110 Insurance		RSONAL INJURY	□ 610 Agriculture	□ 422 Appeal 28 USC 158	13 400 State Reapportionment
□ 130 Miller Act	□ 315 Airplane Product	362 Personal Injury— Med. Malpractice	□ 620 Other Food & Drug □ 625 Drug Related Seizure of	423 Withdrawal 28 USC 157	© 410 Antitrust © 430 Banks and Banking
□ 140 Negotiable Instrument □ 150 Recovery of Overpay-	Liability 0 3 0 Assault, Libel &	365 Personal Injury— Product Liability	Property 21 USC		□ 450 Commerce/ICC Rates/etc. □ 460 Deportation
ment & Enforcement of Judgment	1	368 Asbestos Personal	g 640 R.R. & Truck.	DDODEDTV DIGHTS	□ 470 Racketeer Influenced
o 151 Medicare Act	Linbility	Injury Product Liability	0 650 Airline Regs	PROPERTY RIGHTS	and Corrupt Organizations
 152 Recovery of Defaulted Student Loans (Excl. 	□ 340 Marine □ 345 Marine Product PE	RSONAL PROPERTY	o 660 Occupational Safety/Health	820 Copyrights 830 Patent	810 Selective Service 850 Securities/Commodities/
Veterans) □ 153 Recovery of	Liability of	370 Other Fraud	D 690 Other	X 840 Trademark	Exchange
Overpayment of	D 355 Motor Vehicle D 3	371 Truth in Lending 380 Other Personal			© 875 Customer Challenge 12 USC 3410
Veteran's Benefits □ 160 Stockholders' Suits	Product Liability D 360 Other Personal	Property Damage 385 Property Damage	LABOR	SOCIAL SECURITY	O 891 Agricultural Acts O 892 Economic Stabilization
to 190 Other Contract to 195 Contract Product	Injury	Product Liability	□ 710 Fair Labor Standards Act	□ 861 HIA (1395ff) □ 862 Black Lung (923)	Act
Liability			□ 720 Labor/Mgmt. Relations	□ 863 DIWC/DIWW	☐ 893 Environmental Matters ☐ 894 Energy Altocation Act
REAL PROPERTY		RISONERPETTHONS	& Disclosure Act	(405(g)) a 864 SSID Title XVI	□ 895 Freedom of Information Act
 □ 210 Land Condemnation □ 220 Foreclosure 	□ 441 Voting □ 5	510 Motions to Vacate Sentence	□ 740 Railway Labor Act	u 865 RSI (405(g))	□ 900 Appeal of Fee
D 230 Rent Lease & Ejectment D 240 Torts on Land	□ 443 Housing	Habeas Corpus 530 General	1 790 Other Labor Litigation	, . ;	Determination Under Equal Access to Justice
245 Tort Product Liability	0 444 Welfare D:	535 Death Penalty	□ 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS	n 950 Constitutionality of
□ 290 All Other Real Property	440 Other Civil Rights	540 Mandamus & Other	Au.	D 870 Taxes (U.S. Plaintiff or Defendant)	State Statutes = 890 Other Statutory Actions
		550 Civil Rights 555 Prison Condition		© 871 IRS—Third Party 26 USC 7609	
V ODICIN (PLAC	CE AN "X" IN ONE BOX ONL				
V. ORIGIN X1 Original 2	Removed from	anded from	4 Reinstated or U 5 Transferre	ed from 0 6 Multidistrict	□ 7 Appeal to District
Proceeding	State Court App	ellate Court	Reopened another d (specify)	istrict Litigation	Judge from Magistrate Judgment
Trademark infringement in	JN (Cite the U.S. Civil Statute violation of 15 U.S.C. § 1114	e under which you a and Violation of I	re filing and write a brief statement of 5 U.S.C. § 1125	cause. Do not cite jurisdiction	nal statutes unless diversity.)
VII. REQUESTED IN COMPLAINT:	CHECK IF THIS IS A		MAND \$	CHECK YES only if a JURY DEMAND:	lemanded in complaint: Yes □ No
VIII. RELATED CASI IF ANY	E(S) (See instructions) None	JUD	OGE	DOCKET NUM	BER
DATE april 10.	2008 s	IGNATURE OF A	ATTORNEY OF RECORD	••	
FOR OFFICE USE ONLY		rene	14.16.16.1	PAUL H. KO	CHANSKI
 	IOUNT	APPLYING IFP	JUDGE	MAG. JUDGI	<u> </u>
JS-44 Reverse (Rev. 12/96)					

JS-44 Reverse (Rev. 12/96 865508_1.DOC

Case 2:08-cv-01775-DMC-MF Document 1-4 Filed 04/10/2008 Page 2 of 2

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States, are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

- III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

- VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.
- VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Cancellation No. 92048260

i play. inc. (change of name from FAMILY CLUBHOUSE, INCORPORATED d/b/a i play), a North Carolina corporation,

Cancellation Petitioner,

v.

INTERNATIONAL PLAYTHINGS, INC, a Delaware corporation,

Registrant.

Exhibit offered by i-play inc.

25

INTELNATIONAL PLAYTHINGS

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	78791467
LAW OFFICE ASSIGNED	LAW OFFICE 103
MARK SECTION (no change)	

ARGUMENT(S)

This is in response to the Final Action mailed April 26, 2007, which maintains the Section 2(d) refusal in view of Reg. No. 2,923,675, owned by International Playthings, Inc.

In response, a "Trademark Co-Existence and Consent Agreement" has been entered into with the owner of Reg. No. 2,923,675. A copy is submitted herewith.

The "Trademark Co-Existence and Consent Agreement" was carefully drafted in view of TMEP 1207.01(d)(viii), and the cases there cited, including *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). It is submitted that the Consent Agreement is well sufficient to overcome the Section 2(d) refusal.

For the record, in the Office Action mailed April 26, 2007, the trademark examining attorney characterizes applicant's previous argument as follows: "Applicant argues that no likelihood of confusion exists between the proposed mark and cited mark because similar marks previously co-existed on the Principal Register." That is not exactly what applicant previously argued. Rather, applicant pointed out that, when the currently-cited Reg. No. 2,923,675 was a pending application, the examiner in that case did not find a likelihood of confusion in view of the current applicant's then-active earlier Reg. No. 2,115,786. It was requested that the Office apply a consistent standard. Applicant did not previously argue that no likelihood of confusion exists. In the event the current "Trademark Co-Existence and Consent Agreement" is not accepted by the trademark examining attorney as sufficient to overcome the Section 2(d) refusal in the subject application, applicant is not precluded from initiating a cancellation proceeding against Reg. No. 2,923,675.

In view of the foregoing, it is requested that the subject application now be approved for publication.

EVIDENCE SECTION

EVIDENCE EILE NAME(S)

EVIDENCE FILE NAME(S)		
ORIGINAL PDF FILE	evi_7422720592-125342437IPLAY-1-2_Agreement.pdf	
CONVERTED PDF FILE(S) (4 pages)	\\TICRS2\EXPORT14\787\914\78791467\xml1\RFR0002.JPG	
	\\TICRS2\EXPORT14\787\914\78791467\xml1\\RFR0003.JPG	
	\\TICRS2\EXPORT14\787\914\78791467\xml1\\RFR0004.JPG	
	\\TICRS2\EXPORT14\787\914\78791467\xml1\\RFR0005.JPG	
DESCRIPTION OF EVIDENCE FILE	"Trademark Co-Existence and Consent Agreement"	
SIGNATURE SECTION		
RESPONSE SIGNATURE	/Steven C. Schnedler/	
SIGNATORY'S NAME	Steven C. Schnedler	
SIGNATORY'S POSITION	Attorney of record	
DATE SIGNED	09/12/2007	
AUTHORIZED SIGNATORY	YES	
CONCURRENT APPEAL NOTICE FILED	NO	
FILING INFORMATION SECTION		
SUBMIT DATE	Wed Sep 12 13:01:11 EDT 2007	
TEAS STAMP	USPTO/RFR-74.227.205.92-2 0070912130111070699-78791 467-40041ef3323630d2ba7b4 afddccdd3f5d0-N/A-N/A-200	

70912125342437766

PTO Form 1960 (Rev 9/2007) OMB No. 1982 (XXX (EXP. XXXX)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. 78791467 has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

This is in response to the Final Action mailed April 26, 2007, which maintains the Section 2(d) refusal in view of Reg. No. 2,923,675, owned by International Playthings, Inc.

In response, a "Trademark Co-Existence and Consent Agreement" has been entered into with the owner of Reg. No. 2,923,675. A copy is submitted herewith.

The "Trademark Co-Existence and Consent Agreement" was carefully drafted in view of TMEP 1207.01(d)(viii), and the cases there cited, including *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). It is submitted that the Consent Agreement is well sufficient to overcome the Section 2(d) refusal.

For the record, in the Office Action mailed April 26, 2007, the trademark examining attorney characterizes applicant's previous argument as follows: "Applicant argues that no likelihood of confusion exists between the proposed mark and cited mark because similar marks previously co-existed on the Principal Register." That is not exactly what applicant previously argued. Rather, applicant pointed out that, when the currently-cited Reg. No. 2,923,675 was a pending application, the examiner in that case did not find a likelihood of confusion in view of the current applicant's then-active earlier Reg. No. 2,115,786. It was requested that the Office apply a consistent standard. Applicant did not previously argue that no likelihood of confusion exists. In the event the current "Trademark Co-Existence and Consent Agreement" is not accepted by the trademark examining attorney as sufficient to overcome the Section 2(d) refusal in the subject application, applicant is not precluded from initiating a cancellation proceeding against Reg. No. 2,923,675.

In view of the foregoing, it is requested that the subject application now be approved for publication.

EVIDENCE

Evidence in the nature of "Trademark Co-Existence and Consent Agreement" has been attached.

Original PDF file:

evi_7422720592-125342437_._IPLAY-1-2_Agreement.pdf

Converted PDF file(s) (4 pages)

Evidence-1

Evidence-2

Evidence-3

Evidence-4

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Steven C. Schnedler/ Date: 09/12/2007

Signatory's Name: Steven C. Schnedler Signatory's Position: Attorney of record

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 78791467

Internet Transmission Date: Wed Sep 12 13:01:11 EDT 2007 TEAS Stamp: USPTO/RFR-74.227.205.92-2007091213011107

0699-78791467-40041ef3323630d2ba7b4afddccdd3f5d0-N/A-N/A-20070912125342437766

TRADEMARK CO-EXISTENCE AND CONSENT AGREEMENT

This Trademark Co-Existence and Consent Agreement ("Agreement"), entered into as of the 3/5/ day of August, 2007, is between Family Clubhouse Incorporated d/b/a iplay (hereinafter "Family Clubhouse"), a corporation organized and existing under the laws of the State of North Carolina and having a principal place of business at 2000 Riverside Drive, Unit 9, Asheville, North Carolina 28804; and International Playthings, Inc. (hereinafter "IPI") formerly called IPI Acquisition Corp., a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business at 75D Lackawanna Avenue, Parsippany, New Jersey 07054. Both Family Clubhouse and IPI are sometimes referred to herein as a "Party" and, collectively, as the "Parties."

I. BACKGROUND

- A. Family Clubhouse is a baby wear company, and has been in the business of designing, producing and selling clothing and accessories for infants and young children for more than 20 years. An internet website for Family Clubhouse is www.iplaybabywear.com.
- B. International Playthings, Inc. is in the business of designing, producing and selling "award-winning toys for kids of all ages," and has been in business for 30 years. An internet website for International Playthings is www.intplay.com. International Playthings, Inc. has assigned certain trademark rights to IPI Acquisition Corp. which later changed its name to International Playthings, Inc.
- C. Family Clubhouse was the owner of federal trademark Registration No. 2,115,786 of I PLAY. (plus design) as a trademark for *non-disposable swim diapers*, in International Class 25, claiming a date of first use of February 8, 1996. That registration was granted November 25,

- 1997. On February 10, 2005, a Final Decision and Cancellation Order was mailed, and Reg. No. 2,115,786 lapsed because an acceptable Section 8 Declaration had not been timely filed.
- D. On December 5, 2001, International Playthings, Inc., a predecessor in interest of IPI, filed application Serial No. 76-344,977 for registration of I PLAY. (plus design). That mark was registered February 1, 2005 as Reg. No. 2,923,675, with a claimed date of first use of February 2, 2002. The identified goods are educational toys, namely, stacking toys, rattles, blocks, rings and hammer and peg toys; bath toys; pretend play toys, namely, purse and make up sets, fishing reels and rod and fake fish sets, kitchen sets, and doctor kits; sand box toys; water and outdoor toys, namely, buckets, shovels, sand molds, sieves, sand mills and squirt toys; sport toys, namely, hula hoops, jump ropes, baseball bat and ball sets and soccer balls; games, namely, board games, card games and plastic action games; puzzles, namely, jigsaw puzzles, manipulative and cube type puzzles, in International Class 28. By an assignment executed February 28, 2005 and recorded March 11, 2005, Reg. No. 2,923,675 was assigned to IPI Acquisition Corp. On March 2, 2005, IPI Acquisition Corp. changed its name to International Playthings, Inc.
- E. On January 13, 2006, Family Clubhouse filed two replacement applications, for registration of I PLAY. (plus design) and of I PLAY., as trademarks for *children's and infants' cloth bibs; children's headwear; infantwear; and non-disposable swim diapers*, in International Class 25, claiming a date of first use of February 8, 1996. The applications were assigned Serial Nos. 78/791,447 and 78/791,467. In Office Actions mailed April 26, 2007, both of those applications were finally refused by the trademark examining attorney under Section 2(d) of the Trademark Act on the asserted basis of likelihood of confusion in view of Reg. No. 2,923,675.

F. Rather than initiate an action seeking cancellation of IPI's Reg. No. 2,923,675,
Family Clubhouse has contacted IPI, through counsel, about co-existing in the marketplace. The
Parties desire to settle this matter, and to enter into this agreement.

II. COEXISTENCE

- A. The Parties are of the view that there is no likelihood of confusion because, among other things, the respective goods are different, the goods of the two Parties are sold in different markets and through different channels of trade, and the Parties are not aware of any instances of actual confusion.
- B. Moreover, based on current information from the U.S. Patent and Trademark Office TARR and TDR databases, International Playthings, Inc.'s then-pending application No. 76/344,977 which matured into Reg. No. 2,923,675 was approved for publication on October 14, 2002, at which time Family Clubhouse's earlier Reg. No. 2,115,786 (registered November 25, 1997) was an active registration. There is no indication in the file of Reg. No. 2,923,675 that the trademark examining attorney in that case made an issue of Reg. No. 2,115,786, and accordingly did not find a likelihood of confusion.

III. AGREEMENT

- A. Subject to paragraph III. B. below, IPI consents to Family Clubhouse's registration of the marks of Serial Nos. 78/791,447 and 78/791,467. Subject to paragraph III. B. below, Family Clubhouse agrees that it will not initiate a cancellation proceeding against Reg. No. 2,923,675.
- B. In the event the USPTO maintains the Section 2(d) refusals in either or both of application Serial Nos. 78/791,447 and 78/791,467 in view of Reg. No. 2,923,675 notwithstanding the submission of this Agreement, the Parties' consents and agreements under

paragraph III. A. above are nullified, Family Clubhouse may initiate a cancellation proceeding against Reg. No. 2,923,675, IPI may set out any defenses as it sees fit, and no part of this Agreement may be referred to or relied upon to the contrary.

III. AVOIDANCE OF CONFUSION

The Parties hereto agree that they will make efforts to prevent confusion, and to cooperate and take steps to avoid any confusion that may arise in the future.

This Agreement shall be binding upon and inure to the benefit of the Parties, their successors, assigns, subsidiaries, licensees, affiliated companies, and all those acting in concert or participation with them.

IN WITNESS WHEREOF, the Parties have, with all the necessary corporate authority, duly executed this consent agreement as of the date first written above.

	CLUBHOUSE ORATED	INTERNAT	IONAL PLAY I HINGS, IN
Signature:	Bedy Cannon	Signature:	Muhael Varda
Name:	Becky Cannon	Name:	Muhael Varda
Title:	President	Title:	C.60
Date:	9/11/07	Date:	3/31/2007